



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

**[SATS No. VA-128-FOR; Docket ID: OSM-2016-0007;
S1D1S SS08011000 SX066A00 178S180110;
S2D2D SS08011000 SX066A00 17XS501520]**

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Virginia regulatory program (the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Virginia seeks to revise its program regulations to require Virginia to enter permit information into the Applicant Violator System (AVS) database upon receipt of a complete permit application

and require Virginia to conduct a final compliance review between the application approval and permit issuance.

This document gives the times and locations that the Virginia program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing; if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. VA-128-FOR, by any of the following methods:

- Mail/Hand Delivery: Mr. William Winters, Acting Field Office Director,
Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement,
710 Locust Street, 2nd Floor, Knoxville, Tennessee 37902.
- Fax: 865-545-4111

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Knoxville Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. William Winters, Acting Field Office Director

Knoxville Field Office

Office of Surface Mining Reclamation and Enforcement

710 Locust Street, 2nd Floor

Knoxville, Tennessee 37902

Telephone: (865) 545-4103 ext. 170

E-mail: bwinters@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Harve A. Mooney,

Legal Services Officer

Virginia Department of Mines, Minerals and Energy

3405 Mountain Empire Road

Big Stone Gap, Virginia 24219

Telephone: (276) 523-8271

E-mail: *harve.mooney@dmme.virginia.gov*

FOR FURTHER INFORMATION CONTACT: Mr. William Winters, Field Office

Director, Knoxville Field Office. Telephone: (865) 545-4103 ext 170. E-mail:

bwinters@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, Federal Register (46 FR 61088). You can also find later actions concerning the Virginia program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Description of the Proposed Amendment

By letter dated April 29, 2016 (Administrative Record No. VA 2024), Virginia sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.).

In 2015, OSMRE conducted an annual review of the Virginia regulatory program.

OSMRE determined that Virginia's regulations required two additional components regarding the AVS in order to conform with Federal regulations at 30 CFR 773.8 and

773.12. The AVS is an automated information system owned and operated by OSMRE. Information on applicants, permittees, operators, applications and permits as well as unabated or uncorrected environmental violations of SMCRA is maintained in this nationwide database for OSMRE's Federal and State programs. The primary purpose of the AVS is to assist OSMRE and States in making permit eligibility determination required under section 510(c) of SMCRA for applicants of surface coal mining permits. Section 510(c) of SMCRA prohibits issuance of a new permit to any applicant who owns or controls mining operations having unabated or uncorrected violations anywhere in the United States until those violations are abated or corrected or are in the process of being abated or corrected to the satisfaction of the agency with jurisdiction over the violation. The data contained in AVS also assists OSMRE and States in determining the eligibility of bidders on Abandoned Mine Land program contracts under Title IV of SMCRA. Section 773.8 involves general provisions for review of permit application information and entry into the AVS and section 773.12 involves permit eligibility determinations.

Accordingly, Virginia now seeks to amend its State program and is proposing changes to its State regulations as summarized below.

A. Virginia proposes to amend its State program to add provisions to its Virginia Administrative Code (VAC) at 4 VAC 25-130-773.15(a)(3), Review of Permit Applications, to require Virginia to enter permit information into the Federal AVS system after receiving and reviewing a complete permit application. Virginia asserts that this

change is consistent with the Federal requirements of 30 CFR 773.8.

B. Virginia proposes to add a provision to its State program to specify that the final compliance review conducted prior to permit issuance shall occur no more than five business days before issuance. The regulations at 4 VAC 25-130-773.15(e), Review of Permit Applications, requires Virginia to consider any new information concerning violations and business structures submitted during the permit review process. The proposed amendment would add language to that section of the code specifying the maximum period of five business days between that review and permit issuance.

Virginia asserts that this change is consistent with the Federal requirements at 773.12(c).

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electric or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed

regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [Insert date 15 days

after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 22, 2017

Thomas D. Shope, Regional Director

Appalachian Region

[FR Doc. 2017-06397 Filed: 3/30/2017 8:45 am; Publication Date: 3/31/2017]